

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 21/2020



SETTLEMENT OF DISPUTE

BETWEEN

NEVEAST SUPPLIES LIMITED

AND

O'CARTERRIA JOHNSON

AND THE

AWARD

I.D.T DIVISION



MS. SADEERA SHAW - CHAIRMAN

MR. RODCLIFFE ROBERTSON - MEMBER

MR. KEITH FAGAN - MEMBER

DECEMBER 12, 2022

IDT 21/2020



INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF AN INDUSTRIAL DISPUTE

BETWEEN

**NEVEAST SUPPLIES LIMITED
(THE COMPANY)**

AND

**O'CARTERRIA JOHNSON
(THE DISSMISSED WORKER)**

REFERENCE:

By letter dated October 30, 2020 the Honourable Minister of Labour and Social Security pursuant to Section 11A(1)(a)(i) of the Labour Relations and Industrial Disputes Act (hereinafter called "the Act"), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute describe therein:-

The Terms of Reference were as follows:

"To determine and settle the dispute between O'Carterria Johnson on the one hand and Neveast Supplies Limited on the other hand over the termination of his employment."

DIVISION:

The Division of the Tribunal which was selected in accordance with Section 8(2) (c) of the Act and which dealt with the matter comprised:

Miss Sadeera Shaw	-	Chairman
Mr. Rodcliffe Robertson	-	Member, Section 8(2)(c)(ii)
Mr. Keith Fagan	-	Member, Section 8(2)(c)(iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

Ms. Petrina Williams	-	Attorney-at-Law
Ms. Shantel Jarrett	-	Attorney- at-Law

Also in attendance:

Ms. Janet Chen	-	Branch Manager
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The **Dismissed Worker** was represented by:

Mr. Alexander Nicholson	-	Industrial Relations Consultant
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In attendance:

Mr. O'Carterra Johnson	-	Dismissed worker
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SUBMISSION AND SITTINGS:

Brief were submitted by both parties who made oral submission during six (6) sittings held between February 4, 2021 and September 29, 2021. The Company was originally represented by Ms. Petrina Williams, Attorney-at-Law and then by Ms. Shantel Jarrett, Attorney-at-Law.





BACKGROUND TO THE DISPUTE:

1. Neveast Supplies Limited, *hereinafter referred to as "the Company"*, is a company duly incorporated under the laws of Jamaica with its registered office at 10 Skibo Avenue, Kingston 10, Saint Andrew. The Company is a family owned Jamaican company that started in 1962 when founder, Mr. Neville East, decided to service the country's stationery needs. With its headquarters located in Kingston, the Company's distribution network covers the entire island of Jamaica and recently includes coverage in neighboring Caribbean countries.
2. Mr. O'Carterria Johnson, *hereinafter referred to as the Dismissed Worker*, was formerly employed to the Company as an Account Executive on September 30, 2013. The Dismissed Worker was based at the Montego Bay branch office located at Unit 22 Bogue City Centre. By way of letter dated August 24, 2018, the Dismissed Worker's employment was terminated with immediate effect. Please see below the letter of termination:

"August 24, 2018

TO: Mr. O'Carterria Johnson

This letter is to inform you that your employment with Neveast Supplies Limited will end effective immediately August 24, 2018. This decision is not reversible.

You have been terminated for the following reasons listed below despite of which verbal and written warning letters have been sent prior with outlining these concerns:

- *Inconsistent performance in sales for over a year. You have failed to meet the performance targets agreed upon.*
- *Inconsistent performance in collections of your sales.*
- *Poor communication with clients and management*
- *Constantly late for work every day.*
- *Bad influence on old and new members of staff causing animosity.*
- *Unprofessional attitude with bad mouthing the company.*

- *Habitually absent for work at a rate of once per month.*

You will receive today the following:

- *Final salary which includes your sales commission for the final sales period*
- *Outstanding vacation pay*

You are requested to return all of the company's property such as the advance gas card, cellular phone and sim card, all brochures pertaining to the company's products sold and uniform shirts before the end of day.

If you have any questions about your termination please do not hesitate to contact me, Neveast wishes you the best in your future employment.

Sincerely,

Christian East

General Manager

cc: Paul East

Janet Chen

David East

Gregory East

Leisa Dundas"



3. The Dismissed Worker engaged the services of Mr. Carlton Melbourne, Attorney-at -Law, who contested his termination and sought the intervention of the Ministry of Labour & Social Security. No resolution was reached and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

THE COMPANY'S CASE:

4. In the presentation of its case, the Company through its Attorney, Ms. Shantel Jarrett called its sole witness Ms. Janet Chen, Branch Manager for the Western Division of the Company, in support of its case. Ms. Chen explained her duties as consisting of being responsible for the full operation of the branch including the sales team. She testified that



she was the Dismissed Worker's Sales Manager/Branch Manager during his tenure as an Account Executive up until his termination. As his Sales Manager, she gave evidence that she held monthly and/or weekly meetings where the Dismissed Worker reported his collections to her and updated her on his communication with the clients.

5. She explained the Dismissed Worker's duties consisted of sales and collection as they both worked hand in hand. She stated that the Dismissed Worker was put in charge of some existing accounts at the Company and was expected to solicit new clients in order to create new accounts. With regards to his salary, it is her evidence that the Dismissed Worker earned a base salary of fifty thousand Jamaican dollars (\$50,000 JMD) for the first three (3) months after which he earned a commission only. She indicated that if the commission was greater than the monthly salary, the monthly salary was forfeited and the Dismissed Worker earned only the commission. She explained that the commission is usually more than the monthly salary. As such, the monthly base salary was to get the employee up and running until they start earning commission. She explained that there was a commission scale which started at 2% up to approximately 5%-7% on receivables. Along with his salary and commission, Ms. Chen stated that the Dismissed Worker received a gas card of twelve thousand Jamaican dollars (\$12,000 JMD) on a monthly basis. She testified that the Dismissed Worker's work hours was 8:30am-4:30pm but was expected to be available by phone 24hrs.
6. Ms. Chen testified that the Dismissed Worker, when he started working at the Company, was very energetic, pleasant and passionate about his job and the Company. She stated that the Dismissed Worker's attitude and performance began to deteriorate after some time. She gave evidence that the Dismissed Worker was often late without an explanation, the Company received complaints from his clients and he wore improper attire to work. She further gave evidence that it's because of the Dismissed Worker, she insisted with the Head Office for the employees to wear uniforms shirts. With regards to his absences, it is her evidence that it had gotten out of hand and that's when the Dismissed Worker informed management that he was doing a real estate course and needed time to complete it. She stated that the Dismissed Worker used up his vacation and requested additional days.



7. She further stated that their relationship started to go downhill because of his performance. Ms. Chen gave evidence that she had meetings with the Dismissed Worker regarding how he was handling his clients, internal customers and his receivables. She later testified that she couldn't recall if an evaluation of the Dismissed Worker's performance was conducted. Ms. Chen gave evidence that the Dismissed Worker was issued several verbal warnings for his performance as well as two (2) written warnings. Ms. Chen also gave evidence that she had meetings with the Dismissed Worker concerning the reason for the written warnings. An agreement was reached as to how the Dismissed Worker would improve but the same issues arose a few weeks later.
8. It is Ms. Chen's evidence that leading up to the Dismissed Worker's termination, he was absent from work for a few days without explanation. She testified that was when she made the decision to terminate him. When he returned to work, she stated that a conference call was held with herself, Ms. Christina East, Mr. David East and the Dismissed Worker to have a discussion. It was in that meeting that the Dismissed Worker was issued a termination letter in a sealed envelope from the Head Office and told the reason for his termination. She indicated that she was not aware of the contents of the termination letter. It is her evidence that a disciplinary hearing was not conducted prior to Mr. Johnson's termination. She confirmed that the Dismissed Worker was not given the right to representation, no charges were laid against him and that the termination was conducted in breach of the Labour Relations Code. She stated that the Dismissed Worker wasn't given an opportunity to appeal the decision as he (the Dismissed Worker) would have to ask for it.
9. Ms. Chen stated that at the time of the Dismissed Worker's termination, his account receivables were not up to date. She further stated that it amounted to approximately six (6) million Jamaican dollars. She testified that the Dismissed Worker was aware of the outstanding receivables from a report that was issued. She stated that if the Dismissed Worker wanted to collect commission on the said receivables despite being terminated, he should do so even though she does not know how. She later confirmed that it would be almost impossible for him (the Dismissed Worker) to collect monies on behalf of the

Company after being terminated. She further stated that the Company had a mechanism in place if the situation arose where an employee was unable to collect outstanding receivables. That mechanism was the Collections Department.



THE COMPANY'S CONTENTIONS

The Company contends that:

- a. The Dismissed worker was not a truthful and credible witness as his evidence was evasive and contradictory;
- b. The Tribunal should accept Ms. Chen as a witness of truth as she had no difficulty answering questions even when the truth did not serve her;
- c. The Company had cogent reasons to dismiss Mr. Johnson and that he contributed greatly to his termination;
- d. The Company's representative asked that if the Tribunal finds that Mr. Johnson was unjustifiably terminated that any compensation awarded to him should be nominal in the circumstances.

THE DISMISSED WORKER'S CASE:

10. Mr. Alexander Nicholson, the Dismissed Worker's representative, adduced documentary evidence and made oral submissions in support of their case that the Company's decision to terminate the Dismissed Worker's contract of employment was unfair and unjustifiable.
11. Mr. Johnson testified in his examination-in-chief that he was employed at the Company in the capacity of Account Executive. He described his duties as consisting of selling everything the Company offers such as furniture, office supplies, stationeries, cubicles for call centers and services. He stated that his relationship with the management team was good as there was open communication with everyone including the CEO. Mr. Johnson



testified that with the said open communication with his managers, they (the managers) sometimes spoke to him about his performance. He confirmed that he was sometimes given an opportunity to correct his performance and other work-related issues such as tardiness and attire. In addition, Mr. Johnson confirmed that he was verbally warned and received written warnings about his performance and other work-related issues. He later gave evidence that the Company issued the warning letters based on things that were not true.

12. He gave evidence that on August 24, 2018 he worked his full shift and at approximately 4:00pm he received a call from his manager and was issued a termination letter. Upon receiving the said letter, he gave evidence that he read it and asked Ms. Chen if she was aware of what the letter stated. He stated that Ms. Chen responded in the affirmative. He further stated that he asked her numerous times if she was sure and she (Ms. Chen) responded yes.
13. It is Mr. Johnson's evidence that he requested to speak with Ms. Christina East from the Head Office. He testified that Ms. East was contacted via telephone where he asked her a few times for the reason for his termination. He further testified that he was not given an opportunity to appeal the decision in the meeting but still begged for his job. He stated that Ms. East responded that he should have been fired three (3) years ago. He gave evidence that he told her thanks, stepped out of the office and turned off his computer. It is his evidence that his performance was not evaluated prior to his termination.
14. Mr. Johnson explained that commission at the Company was paid in two (2) parts, namely: sales which was 2% of what the item was sold for and collection which was paid on the profit made. With regards to uncollected commission, Mr. Johnson stated that in sales there is always monies to be collected unless you aren't selling anything. He explained that the clients are placed on 15 days, 30 days or 60 days credit. He mentioned one project in which commissions were outstanding, namely, Concentrix. He explained that Concentrix was a call centre and the first project the Company had of that magnitude. He further explained that usually the Company supplied furniture and office supplies but in

this instance the Company was the contractor where they were in charge of constructing the building, lighting, floors and air conditioning.

15. He testified that he was the Account Executive for that project for the better part of 2017 and 2018. He testified that he was paid commission on collection from the deposit paid to the Company from Concentrix. He further testified that he noticed issues after that amount was paid to him. He gave evidence that he was no longer made aware when Concentrix made a payment so he can't claim the commission on collection. He stated that he asked management about his outstanding commission from the Concentrix project on a number of occasions and that he received a response from Mr. Paul East, a Director, 2-3 days before he was terminated that he would receive it that month.
16. With regards to his absences, it is Mr. Johnson's evidence that he expressed his interest in doing a real estate course to management and informed them that it would not distract him from his duties at the Company. He stated that the duration of the course was three (3) months and classes were held once per week in Kingston. He gave evidence that he received approval for the days he was absent from work and that he applied for his remaining vacation days and all of his vacation leave for the next year in order to complete the course. He gave evidence that he and a Senior Manager in Kingston had to explain to Ms. Christina East that pursuing a real estate course would assist him in his current job.
17. He gave evidence that he was employed at another company, namely, Today's Office, in the capacity of Account Executive on a consultancy basis two (2) months after his termination. However, that employment lasted for a few months. He testified that he didn't get a chance to utilize his real estate license until a year after he was terminated from the Company and he is working full time in that field since March 2020.





THE DISMISSED WORKER'S CONTENTIONS

He contends that:

- a. He was not informed of the charges laid against him so as to allow time to understand, seek representation of his choice and prepare his case;
- b. He was terminated without due process. He was denied a disciplinary hearing, not allowed to have a representative of his choice, right to a defense and the right to face his accuser;
- c. He was not given the right to appeal his termination as the Company stated that its decision was irreversible;
- d. The Company's actions runs counter to standard industrial relations practices and is not in keeping with the Labour Relations Industrial Disputes Act, the Labour Relations Code and the rules of natural justice;
- e. The Dismissed Worker's Representative asked the Tribunal to find that the Dismissed Worker was unjustifiably dismissed and that it should award compensation for the period between his dismissal and the award in the form of salary and commission as per his employment contract.

THE TRIBUNAL'S RESPONSE AND FINDINGS

18. The Tribunal, after careful examination of the evidence adduced by both parties, must determine whether the Company was justified in the termination of Mr. Johnson's employment.
19. The Tribunal accepts that the Dismissed Worker was employed to the Company in the position of Account Executive in which his duties centred on sales and collections. It was admitted by both parties that the Dismissed Worker had issues with his performance, attire



and tardiness. The Tribunal accepts the evidence of the Company's sole witness, Ms. Janet Chen, that numerous meetings were held with the Dismissed Worker to address said issues. The Tribunal further accepts that the Company gave the Dismissed Worker opportunities to correct those issues and that he (the Dismissed Worker) was issued verbal and written warnings as a result of not showing consistent improvement.

20. On August 8, 2018, after being absent for a few days, the Dismissed Worker was summoned to his manager's office where he was issued a termination letter. The Tribunal accepts the Dismissed Worker's evidence that a performance evaluation was not conducted prior to his termination. The Tribunal does not accept the Company's submission that the Dismissed Worker, after being terminated, is still responsible for collecting outstanding receivables on behalf of the Company. The Tribunal is of the view that when one is terminated, there is no longer any obligation between the parties unless proven otherwise. No such evidence was provided. It was argued by the Dismissed Worker that there was outstanding commission owed to him from the Concentrix project. The Tribunal finds that no evidence was provided to substantiate it. Having considered all of the evidence, it is the Tribunal's position that the Company had cogent reasons to terminate Mr. Johnson.

21. In considering the matter of procedural fairness during the disciplinary process, the Tribunal is tasked to look into the Company's dealings with the Dismissed Worker. The Tribunal finds that on August 8, 2018, the Dismissed Worker was not informed of the reason for being called to his manager's office at the end of the work day. Further, the Dismissed Worker was not informed of the charges laid against him. As such, he was not given an opportunity to prepare his case. Both Ms. Chen and the Dismissed Worker confirmed that the meeting held on August 8, 2018 was not a disciplinary hearing and that the Dismissed Worker was not invited to a disciplinary hearing prior to his termination. The Dismissed Worker was not given an opportunity to defend himself nor to choose a representative of his choice. Despite the Company's contention, the Tribunal finds that the Dismissed Worker was not given a right to appeal the Company's decision to terminate him.



22. It is the Tribunal's position that the Company failed to observe Section 22 of the Labour Relations Code which states:

Disciplinary Procedure

- 1) *Disciplinary Procedures should be agreed between management and worker representatives and should ensure that fair and effective arrangements exist for dealing with disciplinary matters. The procedure should be in writing and should:*
 - a) *specify who has the authority to take various forms of disciplinary action, and ensure that supervisors do not have the power to dismiss without reference to more senior management;*
 - b) *Indicate that the matter giving rise to the disciplinary action be clearly specified and communicated in writing to the relevant parties;*
 - c) *give the worker the opportunity to state his case and the right to be accompanied by his representatives;*
 - d) *provide for a right of appeal, wherever practicable, to a level of management not previously involved;*
 - e) *be simple and rapid in operation.*

23. The Tribunal must also consider Section 3(4) of the Labour Relations and Industrial Disputes Act, which states:

"A failure on the part of any person to observe any provision of a Labour Relations Code which is for the time being in operation shall not of itself render him liable to any proceedings; but in any proceedings before the Tribunal or a Board any provision of such code which appears to the Tribunal or a Board to be relevant to any question arising in the proceedings shall be taken into account by the Tribunal or Board in determining that question."

24. The Tribunal finds that the procedure followed by the Company was not in keeping with the rules of natural justice and its failure in observing the provisions of the Labour Relations Code rendered its decision to terminate Mr. Johnson to be unfair. The Tribunal also notes that the Dismissed Worker mitigated his loss.

25: Thus, the Tribunal concludes that the Dismissed Worker was unjustifiably dismissed. Having regard to all of the evidence, the Tribunal can't ignore the fact that the Dismissed Worker contributed to his termination.




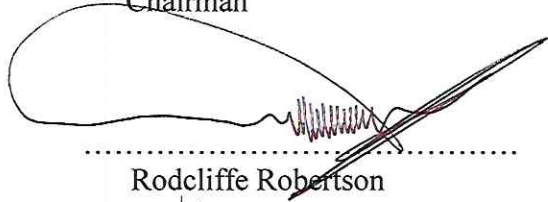
AWARD


In accordance with Section 12 of the Labour Relations and Industrial Disputes Act, the Tribunal awards that Mr. O'Carterra be compensated in the amount of Five Million One Hundred and Eighteen Thousand Seven Hundred and Fifty Dollars (\$5,118,750.00) for his unjustifiable dismissal.

DATED THIS 12 DAY OF DECEMBER 2022





Sadeera Shaw
Chairman


Rodcliffe Robertson
Member


Keith Fagan
MemberP

Witness


Jody-Ann Lindo
Secretary to the Division